101-588

Public Law 101-588
101st Congress

An Act

Entitled the "Antitrust Amendments Act of 1990"

Nov. 16, 1990
[H.R. 29]

Antitrust Amendments Act of 1990
Corporations
15 USC 1 note

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Antitrust Amendments Act of 1990".

SEC. 2. Section 8 of the Clayton Act (15 U.S.C. 19) is amended to read as follows:

"SEC. 8. (a)(1) No person shall, at the same time, serve as a director or officer in any two corporations (other than banks, banking associations, and trust companies) that are—

"(A) engaged in whole or in part in commerce; and

"(B) by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the antitrust laws;

if each of the corporations has capital, surplus, and undivided profits aggregating more than $10,000,000 as adjusted pursuant to paragraph (5) of this subsection.

"(2) Notwithstanding the provisions of paragraph (1), simultaneous service as a director or officer in any two corporations shall not be prohibited by this section if—

"(A) the competitive sales of either corporation are less than $1,000,000, as adjusted pursuant to paragraph (5) of this subsection;

"(B) the competitive sales of either corporation are less than 2 per centum of that corporation's total sales; or

"(C) the competitive sales of each corporation are less than 4 per centum of that corporation's total sales.

For purposes of this paragraph, 'competitive sales' means the gross revenues for all products and services sold by one corporation in competition with the other, determined on the basis of annual gross revenues for such products and services in that corporation's last completed fiscal year. For the purposes of this paragraph, 'total sales' means the gross revenues for all products and services sold by one corporation over that corporation's last completed fiscal year.

"(3) The eligibility of a director or officer under the provisions of paragraph (1) shall be determined by the capital, surplus and undivided profits, exclusive of dividends declared but not paid to stockholders, of each corporation at the end of that corporation's last completed fiscal year.

"(4) For purposes of this section, the term 'officer' means an officer elected or chosen by the Board of Directors.

"(5) For each fiscal year commencing after September 30, 1990, the $10,000,000 and $1,000,000 thresholds in this subsection shall be increased (or decreased) as of October 1 each year by an amount equal to the percentage increase (or decrease) in the gross national product, as determined by the Department of Commerce or its successor, for the year then ended over the level so established for

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the year ending September 30, 1989. As soon as practicable, but not later than October 30 of each year, the Federal Trade Commission shall publish the adjusted amounts required by this paragraph.

"(b) When any person elected or chosen as a director or officer of any corporation subject to the provisions hereof is eligible at the time of his election or selection to act for such corporation in such capacity, his eligibility to act in such capacity shall not be affected by any of the provisions hereof by reason of any change in the capital, surplus and undivided profits, or affairs of such corporation from whatever cause, until the expiration of one year from the date on which the event causing ineligibility occurred."

Repeal

SEC. 3. Section 10 of the Clayton Act (15 U.S.C. 20) is hereby repealed.

AMENDMENTS

SEC. 4. (a) RESTRAINT OF TRADE AMONG THE STATES.—Section 1 of the Sherman Act (15 U.S.C. 1) is amended—

(1) by striking "one million dollars" and inserting "$10,000,000", and

(2) by striking "one hundred thousand dollars" and inserting "$350,000".

(b) MONOPOLY.—Section 2 of the Sherman Act (15 U.S.C. 2) is amended—

(1) by striking "one million dollars" and inserting "$10,000,000", and

(2) by striking "one hundred thousand dollars" and inserting "$350,000".

(c) OTHER RESTRAINTS OF TRADE.—Section 3 of the Sherman Act (15 U.S.C. 3) is amended—

(1) by striking "one million dollars" and inserting "$10,000,000", and

(2) by striking "one hundred thousand dollars" and inserting "$350,000".

TREBLE DAMAGES FOR THE UNITED STATES

SEC. 5. Section 4A of the Clayton Act (15 U.S.C. 15a) is amended by striking out "actual" and inserting in lieu thereof "threefold the".

Approved November 16, 1990.

LEGISLATIVE HISTORY—H.R. 29 (S. 994):

HOUSE REPORTS: No. 101-483 (Comm. on the Judiciary).
SENATE REPORTS: No. 101-286 accompanying S. 994 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 136 (1990):
May 15, considered and passed House.
Oct. 27, considered and passed Senate, amended. House concurred in Senate amendments.

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